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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/403,192    01/13/00    MULLER    J    81000.3000

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EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

11/21/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/403,192

Applicant(s)

Muller et al

Examiner

Alton Pryor

Group Art Unit

1616



☒ Responsive to communication(s) filed on Oct 20, 1900

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-13 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **Detailed Action**

#### ***Election***

The elected composition by the applicants in paper no. 7 is suggested by the prior art. See art rejections below.

#### ***Claim Rejection under 35 U.S.C. 112, 2nd paragraph***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1,5,7-10,12,13 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of

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the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation inorganic adsorbent, and the claim also recites preferably from the group of alcohols which is the narrower statement of the range/limitation. In the present instance, claim 8 recites the broad recitation wetting agents and dispersants, and the claim also recites preferably selected from ethoxylated trisstyrenephenol which is the narrower statement of the range/limitation. In the present instance, claim 8 recites the broad recitation wetting agent and dispersants, and the claim also recites in particular from the mixed calcium/magnesium/zinc lignin sulphonate which is the narrower statement of the range/limitation. In the present instance, claim 9 recites the broad recitation inorganic adsorbent is from 0.5 - 15%, surfactant is from 5-40%, and active compound is from 5-75%, and the claim also recites inorganic adsorbent is preferably from 2-15%, surfactant is preferably from 7-35%, and active compound is preferably from 15-55% which is the narrower statement of the range/limitation. In the present instance, claim 11 recites the broad recitation specific surface area of from 100 to 700 m<sup>2</sup>/g, and the claim also recites preferably of from 130 to 250 m<sup>2</sup>/g which is the narrower statement of the range/limitation.

Claims 5 and 9 contain the trademark/trade name Volpo T'785, Volpo T/10, Emulsogen, Genapol, LRO, Tensiofix Special, Soprophor FL, Soprophor FL 60, Hoechts LFS. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

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paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe surfactant and dispersants and, accordingly, the identification/description is indefinite.

Regarding claim 7 lines 3-4, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claims 12 and 13 recites the limitation "the components" in lines 3 and 2 respectively.

There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14-19,23-32  
Claims 1-3,6-8,10,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Wieschollek et al (GB 2 245 494; 1/8/92).

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Wieschollek et al discloses a wettable powder and wettable granule herbicidal composition comprising metamitron, ethofumesate, phenmedipham and desmedipham as the active herbicides. See abstract, page 1 lines 1-7, page 2 lines 18-27. The reference discloses a number of equivalent carries and emulsifiers that may be a part of the herbicide composition including the carrier, silicic acid and emulsifier, silicone surfactant. See page 6 lines 10-25. The reference also suggests the inclusion of the dispersing agent, lignin sulphonate and customary auxiliaries such as wetting agents in the herbicide composition. See abstract, page 7 lines 5-16, page 11 lines 2-12. The prior art references discloses that the composition is prepared by using an air-jet mill to mix and grind the ingredients of the composition into granules with particle size ranging from 200-1500 um. The reference does not disclose an Example composition comprising all of the ingredients above, the instant percent ranges of adsorbent, herbicide and surfactant and fineness of 0.5 to 20 um for the composition. However, since the prior art discloses a number of equivalent herbicides and carriers including those above, it would have been obvious to one having ordinary skill at the time the invention was made to choose the prior art herbicides and carrier to make the instant composition. One would have been motivated to do this because the substitution of equivalent compounds in a composition should result in compositions having a similar effect. One having ordinary skill in the art the time the invention was made would have been expected to determine the optimum % ranges and particle size (fineness) of the prior art composition through routine experimentation. The optimum ranges/particle size may have fallen

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within the instant broad ranges. One would have been motivated to do this in order to develop a composition that would have been most effective in controlling weeds in crop.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wieschollek et al <sup>20, 22</sup> as applied to claims 1-3,6-8,10,12,13 above, and further in view of CIBA-GEIGY (WO 95/18531; 7/13/95).

6. See 103(a) rejection for claims 1-3,6-8,10,12,13 above. Wieschollek et al teach all that is recited in claim 4 except for the herbicide composition comprising tridecanol ethoxylate. However, CIBA-GEIGY discloses a herbicidal composition comprising isotridecanol. See page 10 line 34 - page 12 line 17. The composition exists as a wettable powder and is used to control weed growth in crop plants. See abstract, See page 10 line 34 - page 12 line 17. One having ordinary skill in the art at the time the invention was made would have been expected to add the isotridecanol ethoxylate taught by CIBA to the composition taught by Wieschollek et al. One would have been motivated to do this so that high biological activity is achieved with the herbicide formulation at low rates of application.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wieschollek et al as applied to claims 1-3,6-8,10,12,13 above, and further in view of JP 63023804; 2/1/88.

See 103(a) rejection for claims 1-3,6-8,10,12,13 above. Wieschollek et al teach all that is recited in claim 11 except for the herbicide composition comprising silica gel with a silicone dioxide content of at least 95% and a specific gravity of 100 to 700 m2/g. However, JP '804 discloses a herbicidal composition comprising silica gel. The composition exists as a wettable

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powder and is used to control weed growth in crop plants. See abstract. One having ordinary skill in the art at the time the invention was made would have been expected to add the silica gel as a carrier taught by JP '804 for the composition taught by Wieschollek et al. One would have been motivated to do this to broaden the herbicidal spectrum for the composition. With respect to the 95 % silicon dioxide content and 100 to 700 m<sup>2</sup>/g specific gravity, one would have expected the silica gel in the prior art to have a certain amount of silicon dioxide since silica gel is made from silicon dioxide, and quite naturally the silicon dioxide would have a specific gravity since specific gravity is physical property of the chemical. Although the reference is silent to the amount of silicon dioxide present and the range of its specific gravity, it would have been obvious to one having ordinary skill in the art to determine the optimum amount of silicon dioxide and its specific gravity through routine experimentation. One would have been motivated to do this because one would have been motivated to make the most effective delivery carrier for the composition.

#### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 305-3592.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Alton Pryor". The signature is fluid and cursive, with the first name "Alton" and last name "Pryor" clearly distinguishable.

Alton Pryor

Patent Examiner, AU 1616

11/8/00